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IN THE

Supreme Court of the United States

October Term, 1951

No.

LOWELL JOHN BLOCK, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF COLORADO,
RESPONDENT.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO AND BRIEF IN SUPPORT THEREOF

Petitioner seeks review of a judgment of the Supreme Court of Colorado rendered in the case of Lowell John

Block, plaintiff in error, vs. The People of the State of Colorado, defendant in error.

This case has not been officially reported as yet.

BASIS ON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION

Jurisdiction herein exists by virtue of 28 U. S. C. A., Section 1257 (3).

The Supreme Court of the State of Colorado being the highest court of law and equity in said state has rendered its final judgment and decision in this cause wherein a right, privilege and immunity under the Constitution of the United States has been specially set up and claimed by petitioner, to-wit: the right to freedom from unreasonable search and seizure and self-incrimination, which rights are guaranteed by the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, and by Article Two, Section Eighteen of the Constitution of the State of Colorado.

DATE OF JUDGMENT

The Court rendered its judgment on November 19, 1951, and the petition for a rehearing was denied February 11, 1952.

STATEMENT OF THE CASE

The District Attorney of Morgan County filed the original information alleging that the defendant was guilty upon three counts; namely, killing while under the influence of liquor, involuntary manslaughter, and reckless driving. [Fol. 6.] The case was tried to a jury in Morgan County on March seventh and eighth, 1951, and on the eighth day of March, 1951, the jury returned a verdict finding the defendant guilty on all three counts in the

information, for which he was duly sentenced by the district judge to a period of confinement of thirty days in the county jail upon the charge of involuntary manslaughter, thirty days upon the charge of reckless driving, and five to ten years in the State Penitentiary at Canon City, Colorado, upon the charge of killing while under the influence of liquor [Fols. 42-43.] This action taken by the District Attorney of Morgan County arose out of an automobile accident which occurred on August 13, 1950, near the town of Hillrose, Colorado, on U. S. Highway 6, in the State of Colorado. [Fol. 6.]

The facts of the accident were that the car being driven by the defendant, Lowell John Block, was proceeding from Sidney, Nebraska, to Denver, Colorado. The car containing the deceased parties as well as the complaining witnesses was proceeding from Denver, Colorado, to Julesburg, Colorado, there being nine people in the car at the time that the accident occurred at a point just outside of Hillrose, Colorado, on a curve, and both cars ended up in the ditch, each on the wrong side of the highway.

Immediately after the accident the State Patrolman, Donald Aboe, was called to investigate the accident and there were also numerous witnesses stopped around the scene of the accident, including the witnesses named and endorsed as witnesses by the District Attorney at the trial of this case.

Within a very short time after the accident occurred the defendant, Lowell John Block, and the other passenger in his car were taken to the Eben-Ezer Hospital in Brush, Colorado, and there placed on ambulance stretchers and were kept in the hall, or outside the confines of the hospital for a short period of time.

During the same evening, under orders from a state officer, samples of blood were taken from both Block and

his passenger Gehrig. Block was still unconscious at this time and unaware of what was being done. (Emphasis ours.) Opinion Colo. Sup. Ct. p. 20.

At the trial of the case, held in the District Court at Fort Morgan, the blood alcohol samples that were taken were introduced into evidence, identified by the nurse Miss Bennett as being the blood samples that she had taken and were later identified by the doctor and other specialists from the Colorado General Hospital as to the amount of alcohol contained in the blood samples, and also an opinion was given by the head of the chemical laboratory of the Colorado General Hospital as to the amount of alcohol contained in the blood and his conclusions as to the effect it would have on a person's condition if that much alcohol were consumed.

After a trial of all of the issues herein, the verdict of the jury was returned as hereinabove set out.

The defendant, after sentencing by the District Court of Morgan County, State of Colorado, received a stay of execution pending appeal to the Colorado Supreme Court, and on November 19, 1951, the judgment of the trial court was affirmed, and petition and supplemental petition for rehearing were denied on February 11, 1952. The petition for rehearing was dissented to by Justice Moore.

The petitioner received a stay of execution from the Supreme Court of the State of Colorado pending petition for review in the United States Supreme Court, which order was made on the fourteenth day of February, 1952.

MANNER IN WHICH THE CONSTITUTIONAL QUESTION WAS RAISED

The constitutional question herein was raised in the original proceedings in the District Court of Morgan

County, State of Colorado; in the Supreme Court of the State of Colorado, and in the petition and supplemental petition for rehearing. [Fol. 40-41—132.]

The constitutional question was raised and objections made thereto that the evidence of the blood alcohol test constituted an unlawful search and seizure, and forced and required the petitioner to testify against himself, and deprived him of his rights without due process of law and was in direct violation of Amendments Four, Five and Fourteen of the Constitution of the United States, and Article Two, Section Eighteen, of the Constitution of the State of Colorado. [Fol. 40-41—132.]

REASONS RELIED ON FOR ALLOWANCE OF CERTIORARI

The decision of the Supreme Court of the State of Colorado, if not reversed by this Honorable Court, will result in the petitioner being imprisoned in the State Penitentiary at Canon City, Colorado, without due process of law.

The Constitutions of the United States and the State of Colorado specifically provide that no person shall be forced to incriminate himself, or to testify against himself, nor shall he be deprived of his freedom without due process of law.

This Court, in *Rochin v. People of California*, 72 S. Ct. 205, has specifically ruled that to take blood from the arm of an unconscious man, without his consent, is a violation of the Constitution. This decision, called to the attention of the Colorado Supreme Court in this petitioner's supplemental petition for rehearing filed with that Court, was not adhered to, and the Colorado Supreme Court further refused to follow this decision. For the reasons given in *Rochin v. People of California, supra*, two justices of the Colorado Supreme Court dissented.

QUESTION PRESENTED

The sole question presented herein is whether or not the constitutional rights of the petitioner were violated when the blood alcohol test was used in evidence against him when said blood sample was taken while the petitioner was unconscious and could not consent or object to the taking of the blood sample.

SPECIFICATION OF ERRORS

The Colorado Supreme Court erred:

1. In failing to find on review that the constitutional rights of the petitioner were violated in admitting into evidence a blood alcohol test when it was shown that the blood sample was taken while the petitioner was unconscious and unaware of what had occurred.

2. In failing to reverse the judgment of the trial court in view of the decision of this Court in *Rochin v. People of California,* 72 S. Ct. 205.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

We incorporate and make part of this brief the statement of the case as contained in the petition for a certiorari. A brief summary of the facts is in order.

An accident occurred on the night of August 13, 1950, near Hillrose, Colorado. Immediately after the accident the defendant was taken to the Eben-Ezer Hospital in Brush, Colorado, where, *while he was still unconscious and unaware of what was being done, samples of blood were taken from his arm and sent to Denver to be analyzed.* (Emphasis ours.) Opinion Colo. Sup. Ct. p. 20. Later, at the same trial, this same blood was introduced in evidence against him. [Fol. 132-133.]

The defendant has contended, and still does, that the introduction of this blood sample into evidence violated his constitutional rights in forcing him to give evidence against himself.

The Colorado Supreme Court in 1905 in the case of *Tuttle vs. The People,* 33 Colo. 243, 255, first laid down the rule of self-incrimination in Colorado law, stating:

> "The constitutional provision was not intended to merely protect a party from being compelled to make confession of guilt, *but protects him from being compelled to furnish a single link in a chain of evidence by which his conviction of a criminal offense might be secured.*" (Emphasis ours.)

The Supreme Court of the United States, in the case of *Rochin vs. People of California,* 72 S. Ct. 205, decided January 2, 1952, has clarified this position. The United States Supreme Court in *Rochin vs. People of California, supra,* in passing upon the violation of the defendant's constitutional rights, reviewed in detail the problem of self-incrimination and due process as applied to State courts under the Federal Constitution.

This case is one in which the defendant was convicted of the violation of possessing narcotics and sentenced to sixty days in the county jail. The Deputy Sheriff of Los Angeles County arrested the defendant in his home. At the time of the arrest there were two capsules on the bedstand near the defendant. Upon the approach of the officers, the defendant swallowed the capsules. He was taken to the Los Angeles Hospital where his stomach was pumped without his consent, and the capsules were recovered and eventually used as evidence in securing his conviction.

The United States Supreme Court, in reversing this decision, stated that conviction on such grounds violated the Due Process Clause of the Constitution, and refused to sanction the conduct of the State Officers in the performance of their duty.

In the same decision, Mr. Justice Black in a concurring opinion, held that the actions of the State officers violated the Fifth Amendment of the Constitution in compelling a person to be a witness against himself, stating:

> "I think a person is compelled to be a witness against himself not only when he is compelled to testify, but also when as here, incriminating evidence is forcibly taken from him by a contrivance of modern science."

Mr. Justice Black cited *Boyd vs. United States,* 116 U. S. 616, 6 St. Ct. 524, and other cases.

Mr. Justice Douglas, in another concurring opinion, distinguished the case of *Holt vs. United States,* 218 U. S. 245, saying:

> "Of course an accused can be compelled to be present at the trial, to stand, to sit, to turn this way or that, and to try on a cap or a coat. But I think that words taken from his lips, capsules taken from his

stomach, *blood taken from his veins are all inadmissible, provided they are taken from him without his consent.* (Emphasis ours.) They are inadmissible because of the command of the Fifth Amendment.

"That is an unequivocal, definite and workable rule of evidence for state and federal courts. But we cannot in fairness free the state courts from that command and yet excoriate them for flouting the 'decencies of civilized conduct' when they admit the evidence. That is to make the rule turn not on the Constitution but on the idiosyncrasies of the judges who sit here.

"The damage of the view sponsored by the Court in this case may not be conspicuous here. But it is part of the same philosophy that produced Betts vs. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, denying counsel to an accused in a state trial against the command of the Sixth Amendment and Wolf vs. People of the State of Colorado, 338 U. S. 25, 69 S. Ct. 1359, 93 L. Ed. 1782, allowing evidence obtained as a result of a search and seizure that is illegal under the Fourth Amendment to be introduced in a state trial. It is part of the process of erosion of civil rights of the citizen in recent years."

The Supreme Court of the State of Colorado in the case of *Kallnbach vs. The People,* ..... Colo. ....., ... P. (2d) ....., decided February 4, 1952, again refused to follow the rule laid down by this Court in *Rochin vs. The People of California,* 72 S. Ct. 205, and Mr. Justice Holland and Moore again dissented for the reasons given in the case of *Rochin vs. The People, supra.*

In *Kallnbach vs. The People, supra,* on facts similar in nature to the ones in issue, the defendant was found guilty of killing while under the influence of liquor. A blood alcohol test was made while the defendant was con-

scious, but he did not object or consent, merely remaining silent.

Mr. Justice Holland, in his dissenting opinion, stated:

> "It requires something much more substantial than silence to justify an invasion of his constitutional rights not to be compelled to furnish evidence against himself." This from a justice of a state court.

It is respectfully submitted by the petitioner that under the provisions of the federal and state constitutions, the constitutional rights of the petitioner were violated, and that the judgment of the trial court and the decisions of the Supreme Court of the State of Colorado were error.

WHEREFORE, petitioner respectfully prays that the writ of certiorari be issued herein so that the question here involved may be presented before this Court.

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IN THE

Supreme Court of the United States

October Term, 1951

No. 762

LOWELL JOHN BLOCK, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF COLORADO,
RESPONDENT.

Petition for Writ of Certiorari to the Supreme Court of the State of Colorado

---

BRIEF OF RESPONDENT

Respondent accepts the statement of the case as made by petitioner.

SUMMARY OF ARGUMENT

1. A federal question cannot, for the first time, be raised in a petition to the highest court of the state for a rehearing, after a final decision by that court, so as to sustain the jurisdiction of the Federal Supreme Court over the state court where it appears the state court denied the petition without considering the federal question, and

without assigning reasons for denying the petition. In the state court, petitioner relied upon Section 18, Article II of the Colorado Constitution, providing, "No person shall be compelled to testify against himself in a criminal case . . ." He did not rely upon the Due Process Clause of the 14th Amendment to the United States Constitution, which was the basis of this Court's decision in the case of *Rochin v. California,* 72 S. Ct. 205, now relied upon by petitioner. The state court did not pass upon petitioner's rights under the Due Process Clause.

2. The case of *Rochin v. California,* 72 S. Ct. 205, does not control the facts in the instant case. The controlling feature in that case was the brutal treatment administered to Rochin *upon his arrest* and thereafter to force from his stomach by vomiting two capsules containing morphine. There, the proceedings by which conviction was obtained "shocked the conscience" and violated the 14th Amendment to the Constitution of the United States. The facts of that case distinguish it from the one under discussion.

ARGUMENT

I.

JURISDICTION

It is contended that jurisdiction exists by virtue of 28 U. S. C. A., Sec. 1257(3), and that petitioner specially set up and claimed in the state court a right, privilege and immunity under the Constitution of the United States, to-wit, the right to freedom from unreasonable search and seizure and self-incrimination by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and by Article Two, Section Eighteen of the Constitution of the State of Colorado.

Respondent respectfully suggests that it appears from

the record in this cause that the federal character of the question was not presented to nor passed upon by the state court. The opinion of that Court (ff. 198-208) does not pass upon petitioner's rights under the Fourth, Fifth or Fourteenth Amendments to the Constitution of the United States, but is confined strictly to the self-incrimination issue raised by petitioner under Section 18, Article II of the Colorado Constitution. The author of the opinion says (p. 21, Trans. of Record):

> "Section 18, Article II of the Colorado Constitution, upon which defendant relies, reads as follows: 'No person shall be compelled to testify against himself in a criminal case. . . .' "

Later in the opinion (p. 23, Trans. of Record), it is said:

> "A study of the history of the development of such a constitutional provision as contained in our Colorado Constitution indicates that the original intent was to prevent a defendant from being forced to give testimonial evidence against himself, and did not contemplate the exclusion of evidence of physical facts relating to the defendant. . . ."

Neither at the trial (page 9) in the Motion for a New Trial (p. 203) nor in the Assignment of Errors did petitioner refer to the Fourth, Fifth or Fourteenth Amendments to the United States Constitution.

It was not until after the opinion of the Court had been filed that the question (Due Process Clause of the 14th Amendment to the Constitution of the United States) was raised for the first time in the supplemental petition for rehearing, and then only by calling the attention of the state court to the decision of this Court in the case of *Rochin v. California*, 42 U.S. 165, 72 S. Ct. 205.

The supplemental petition was filed in violation of the

established practice and procedure in Colorado, where such a petition is limited to a discussion of points claimed to have been overlooked or misapprehended by the court. (1) *(See Appendix.)*

The state court denied the petition and supplemental petition for rehearing without considering the question or assigning reasons therefor (f. 210).

It is fundamental that only such questions as are timely and properly presented to an appellate court will be considered. The Supreme Court of Colorado, not being cognizant of the question—petitioner's rights under the Due Process Clause of the Federal Constitution—at the time the cause was submitted, was not bound to and did not consider the question when raised for the first time on petition for rehearing.

This Court has repeatedly held that, unless the federal question is adequately and timely presented to and decided by the state court, it will not and cannot assume jurisdiction.

More specifically, this Court held in *Rooker v. Fidelity Trust Company*, 261 U.S. 114, 67 L. Ed. 556, that an attempt to raise a federal question by petition for rehearing of the final decision of the highest court of the state was too late to permit a review of the decision by this Court on writ of error.

The question has been made the subject of an annotation in 67 L. Ed. 557, where it is said of *Rooker v. Fidelity Trust Co., supra*:

> ". . . Rooker v. Fidelity Trust Co. reaffirms the established rule that a Federal question cannot, for the first time, be raised in a petition to the highest court of the state for a rehearing, after a final decision by that court, so as to sustain the appellate juris-

diction of the Federal Supreme Court over the state court, where it appears the state court dismissed the petition without considering the Federal question raised, and without assigning reasons for dismissing the petition."

The rule is applicable to criminal as well as civil cases. (*Barrington v. Missouri,* 205 U.S. 483, 51 L. Ed. 890, 27 S. Ct. Rep. 582; *McCorquodale v. Texas,* 211 U.S. 432, 53 L. Ed. 269, 29 S. Ct. Rep. 146.)

The assignment of error upon which the Supreme Court of the State of Colorado passed is as follows (f. 197), "4. That the constitutional rights of the defendant were violated and the defendant required to give evidence against himself by the admission of the blood alcohol test into evidence."

This Court has held that such an assignment of error or contention, making no reference to the Federal Constitution, will be regarded as referable solely to the State Constitution if that Constitution contains a provision such as is alleged to be violated. (*Bowe v. Scott,* 233 U.S. 658, 58 L. Ed. 1141.)

It has previously been shown that the Colorado Constitution contains a provision against self-incrimination. It also contains a provision against Unlawful Search and Seizure (2) *(See Appendix)* and contains a Due Process Clause (3) *(See Appendix).*

Of course, petitioner at no time in the state court claimed a violation of his rights under the Due Process Clause of either the Federal or Colorado Constitutions. That clause is the basis of this Court's decision in the Rochin case, *supra,* upon which he now relies.

This Court has held that a question respecting due process of law is not specially set up or claimed so as to

give jurisdiction to the Supreme Court of the United States by assignments of error in the state court which do not refer in any way to the Federal Constitution (*Howard v. Fleming*, 191 U.S. 126, 48 L. Ed. 121, 24 Sup. Ct. Rep. 49; *Hooker v. Los Angeles*, 188 U.S. 314, 47 L. Ed. 487, 23 Sup. Ct. Rep. 395; *Chicago & N. W. R. Co. v. Chicago*, 164 U.S. 454, 41 L. Ed. 511, 17 Sup. Ct. Rep. 129.)

The record conclusively shows that petitioner at no proper time specially set up or claimed any title, right, privilege or immunity under the Constitution of the United States, as required by 28 U. S. C. A., Sec. 1257(3), and hence has failed to establish the necessary elements giving this Court jurisdiction of the instant case. Nowhere did petitioner claim any rights under the Fourth, Fifth or Fourteenth Amendments to the Federal Constitution.

This Court has many times held that the Fourth and Fifth Amendments are not applicable as such to the states. True, the Fourth Amendment, securing one's privacy, may be enforced against the states through the Due Process Clause. But, the Due Process Clause does not protect by virtue of its mere existence the accused's freedom from giving testimony by compulsion in state trials, although secured to him against federal interference by the Fifth Amendment (*Wolf v. Colorado*, 338 U.S. 25, 69 S. Ct. 1359, 93 L. Ed. 1782; *Adamson v. California*, 332 U.S. 46, 91 L. Ed. 1903.)

Obviously, the state court in the case at bar did not decide any question concerning self-incrimination or illegal search and seizure arising under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. That clause is not even mentioned in its opinion. The state court held the action of the trial court, in admitting the blood analysis in evidence against defendant, did not violate Section 18, Article II, Colorado Constitution,

since it was *real* evidence of physical facts relating to the defendant and the prohibition was and is against testimonial compulsion.

II.

ROCHIN V. CALIFORNIA

Petitioner says the case of *Rochin v. California,* 72 S. Ct. 205, decided by the Court January 2, 1952, controls the case at bar. It is the position of respondent that the case does not control because of the difference in facts. No force or brutality is present in the case under discussion, while brutal force was the controlling factor in the Rochin case.

In that case, Rochin was suspected of selling narcotics and three deputy sheriffs, finding the outside door of his home open, entered and forced open the door to his room. Inside, they found Rochin sitting partially dressed upon a bed in which his wife was lying. On a night stand beside the bed were two capsules. When asked, "Whose stuff is this," Rochin seized the capsules and put them in his mouth. A struggle ensued, in the course of which the three officers jumped upon him and tried by force to extract the capsules. Failing in this, they handcuffed him, took him to a hospital and, in an operating room, a doctor forced invito, an emetic solution, into Rochin's stomach by means of a tube. The "stomach pumping" produced vomiting; in the vomited matter were found two capsules which contained morphine. At the trial, the two capsules constituted the chief evidence against him.

In the case at bar, the blood was taken from petitioner while he was unconscious. This we say only because the statement is found in the opinion of the state court, which we assume binds us. The record shows evidence that petitioner consented to the blood test. (ff. 133-144.)

This court, in reversing Rochin's conviction, and speaking through Mr. Justice Frankfurter, repeatedly referred to the brutal force employed by the arresting officers. The methods used were "too close to the rack and screw to permit of constitutional differentiation."

We believe the ground on which Justice Frankfurter rested the case is that of the recent confession cases. Particularly, he refers to *Brown v. State of Mississippi*, 297 U. S. 278, 285, 286, 56 S. Ct. 461, 464, 465, 80 L. Ed. 682, where it was said: "The rack and torture chamber may not be substituted for the witness stand."

It is in the light of the Brown case, *supra*, where confessions were procured by whippings and other brutal treatment, that we must view the remark of Justice Frankfurter in the Rochin case, made immediately after his reference to the earlier Brown case:

> "It would be a stultification of the responsibility which the course of constitutional history has cast upon this court to hold that in order to convict a man the police cannot extract by *force* what is in his mind but can extract what is in his stomach." (Emphasis supplied.)

We believe the force of which he is speaking is *brutal force, cruel force,* such as appeared in *Brown v. Mississippi, supra,* and in the Rochin case itself. Justice Frankfurter, speaking for the court was not applying the self-incrimination provision of the Fifth Amendment to the situation, much as concurring Justices Black and Douglas insisted he should. Continuing, the opinion says:

> "Coerced confessions offend the community's sense of fair play and decency. So *here* to sanction the *brutal* conduct which naturally enough was condemned by the court whose judgment is before us, would be

to afford *brutality* the cloak of law. . . ." (Emphasis supplied.)

We do not believe this court held in the Rochin case that, under no circumstances, can *real* evidence be secured from a prisoner without his consent or against his will. We believe the decision is based upon the *brutality* which was employed. That such is the case is shown from the continuing statement that:

> "In deciding this case we do not heedlessly bring into question decisions in many states dealing with essentially different, even if related problems. We therefore put to one side cases which have arisen in state courts through use of *modern* methods and devices for discovering wrongdoers and bringing them to book. It does not fairly represent these decisions to suggest that they *legalize force so brutal* and so offensive to human dignity in securing evidence from a suspect *as is revealed by this record.*" (Emphasis supplied.)

The facts in the state court decisions referred to could not well be where the prisoner had consented or made no objection to the taking of the evidence. They must include those where *reasonable force* was employed, and those as in *State v. Cram,* 176 Ore. 577, 160 P. (2d) 283, 164 A. L. R. 952, relied upon by the Colorado Supreme Court in the case under discussion.

We believe the Rochin case was limited to such horrendous facts as there appeared when the Court concluded its opinion in these words:

> "*On the facts in this case* the conviction of the petitioner has been obtained by methods that offend the Due Process Clause." (Emphasis supplied.)

We believe this record presents no substantial constitutional question.

CONCLUSION

Believing no federal question is presented by this record, and that this Court has no jurisdiction because of the failure of petitioner to timely raise the question for decision by the Colorado Supreme Court, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

(1) Rule 118, Rules of Civil Procedure (Rehearings), 1935 C. S. A., Vol. 1.

"A petition for rehearing shall bear the cover endorsement prescribed in Rule 115 (h), the name of the justice who wrote the opinion, and shall state whether the decision was *en banc* or in department. It may be filed within 15 days after the filing of the opinion of the court, and shall briefly state the points claimed to have been overlooked or misapprehended by the court with proper references to the record and authorities relied upon. It shall be printed in conformity with Rule 115 (h), except where the decision was on application for supersedeas. No answer will be permitted and no action will be taken save to grant or deny the rehearing. The filing of such petition shall suspend proceedings under the decision until the petition is disposed of, unless the court shall direct otherwise."

(2) Constitution of Colorado, Sec. 7, Art. II, 1935 C. S. A., Vol. 5.

"The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced to writing."

(3) Constitution of Colorado, Sec. 25, Art. II, 1935 C. S. A., Vol. 5.

"No person shall be deprived of life, liberty or property, without due process of law."